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August 15, 2022

BY ECF:

The Honorable Eric Komitee
United States District Judge
Eastern District of New York

Re: *Kalaj, et al., v. Kay, et al.*, 21 CV 4395 (ERC) (JRC)

Dear Judge Komitee:

I represent the plaintiffs in this action. Pending before the Court is defendants' motion to dismiss the First Amended Complaint ("FAC"). I write in response to the discussions held at the oral argument on August 10, 2022.

Declaration of Justina Kalaj:

Plaintiffs have amended the complaint only once. Defendants have not yet filed an answer. I respectfully request that the Court accept the Declaration as part of a Second Amended Complaint ("SAC"). Defendants would not be prejudiced and there was no bad-faith or undue delay on part of the plaintiffs.

In the alternative, plaintiffs request that the Court turn the motion to dismiss as one for summary judgment. Under Federal Rule 12(d) "[i]f, on a motion under Rule 12(b)(6) ... matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56..."

Therefore, plaintiffs respectfully request that the Declaration be added as an exhibit and turn the FAC into a SAC or turn the motion into one for summary judgment.

Thank you.

Respectfully,

/s
Vik Pawar (VP9101)

Cc: All counsel (by ECF)